

COPY

1 Donald Kilmer S.B.N 179986
LAW OFFICES DONALD KILMER
2 1261 Lincoln Ave Ste 111
San Jose, CA 95125-3030
3 Telephone: (408) 998-8489
Facsimile: (408) 998-8487
4

5 Attorneys for Amici
Gun Owners of California
Senator H. L. Richardson
6 California Rifle and Pistol Association
The Madison Society
7

**ENDORSED
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San Francisco County Superior Court

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED JURISDICTION

11 PAULA FISCAL et al.,

12 Plaintiffs and Petitioners,

14 vs.

15 CITY AND COUNTY OF SAN
16 FRANCISCO et al.,

17 Defendants and Respondents.
18

) CASE NO. CPF-05-505960

)
) **AMICUS BRIEF OF SENATOR H. L.
) RICHARDSON (RET.), GUN OWNERS OF
) CALIFORNIA, CALIFORNIA RIFLE &
) PISTOL ASSOCIATION, and THE
) MADISON SOCIETY IN SUPPORT OF
) PETITIONERS**

)
) Hearing Date: February 15, 2006
) Hearing Judge: Warren
) Time: 9:30 a.m.
) Location: Dept. 301

)
) Date Action Filed: December 29, 2005
) Trial Date: None scheduled
)

21 Amicus Curie, GUN OWNERS OF CALIFORNIA, SENATOR H. L. RICHARDSON
22 (RET.), CALIFORNIA RIFLE & PISTOL ASSOCIATION, and THE MADISON SOCIETY
23 respectfully submit the following brief in support of Petitioner.
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1 The accompanying brief primarily addresses the Legislative history and intent of Government
2 Code § 53071 and the significance of that intent in evaluating the legality of the ban on handgun
3 purchases and possession in San Francisco's Proposition H. Understanding the intended scope and
4 application of § 53071 is critical to understanding the preemptive effect of that statute on Proposition
5 H. This is a topic about which these particular amici can provide valuable information to the court,
6 since *amicus* Senator H. L. Richardson (ret.) was the author of the bill that became Government Code
7 § 53071. We will also briefly address the conflict evident in the plain language of the legislation at
8 issue (Part I), before turning to the legislative history in Parts II and III. In Part IV, we examine the
9 comprehensive regulatory scheme of firearms control, and how the Ordinance conflicts with it.
10 Finally, in Part V, we will examine specific misplaced arguments raised by the City regarding recent
11 case law and the continuing validity of the *Doe* case, which is dispositive on the matter now before this
12 Court.

13 ARGUMENT

14 I. THE CITY'S TOTAL BAN ON HANDGUN PURCHASES AND POSSESSION 15 CONFLICTS WITH PENAL CODE § 12026 AND GOVERNMENT CODE § 52071

16 The question whether the City's handgun ban conflicts with State law is beyond the purview of
17 reasoned debate, for the plain meaning of the language of the statutes at issue cannot logically be
18 reconciled with the City's ordinance.¹ While the plain language of § 12026 declares that all law
19 abiding California residents have a statutory right to possess handguns within the sanctity of their own
20

21 ¹Pen. Code § 12026(b) provides: *No permit or license to purchase, own, possess, keep, or*
22 *carry, either openly or concealed, shall be required of any citizen of the United States or*
23 *legal resident over the age of 18 years who resides or is temporarily within this state . . . to*
24 *purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other*
25 *firearm capable of being concealed upon the person within the citizen's or legal resident's*
26 *place of residence, place of business, or on private property owned or lawfully possessed by*
27 *the citizen or legal resident. (Pen. Code § 12026(b)(emphasis added).)*

25 Government Code Section 53701 provides: It is the intention of the Legislature to *occupy*
26 *the whole field* of regulation of the registration or licensing of commercially manufactured
27 *firearms as encompassed by the provisions of the Penal Code, and such provisions shall be*
28 *exclusive of all local regulations, relating to registration or licensing of commercially*
manufactured firearms, by any political subdivision as defined in Section 1721 of the Labor
Code. (Gov. Code § 53701 (emphasis added).)

28 City's Ordinance provisions: Section 3: Within the limits of the City and County of San
Francisco, *no resident* of the City and County, *and, then, only*
within the scope of their duties].

1 homes and businesses without being subject to local license/permit laws, the Ordinance declares just
2 the opposite. It bans, *inter alia*, the purchase and in-home/business possession of *any* handgun by
3 California residents who reside in the City – with or without a permit.

4 Moreover, any doubt as to the state-wide concern and the State’s exclusive authority over this
5 area of gun control is eliminated by the plain language of § 53071, which expressly declares the
6 Legislature’s intent to occupy the whole field of firearm registration and licensing to the exclusion of
7 local governments. Further, § 53071 prohibits “all local regulations, *relating* to registration or
8 licensing of commercially manufactured firearms” To argue that a complete ban on the purchase
9 and possession of handguns does not *relate* to the licensing of handguns or that it does not conflict
10 with State law prohibiting the requirement of a license to possess a handgun on private property, is to
11 ignore the plain meaning of §§ 12026 and 53071. In short, taken together, the two statutes necessarily
12 preclude local governments from banning possession of state-approved handguns within the sanctity of
13 one’s own home or business. The legislative history of § 53071, discussed below, simply reinforces
14 that conclusion.

15 II. HISTORICAL CONTEXT OF GOVERNMENT CODE SECTION 53071

16 San Francisco’s Proposition H is the latest in a long line of attempts to ban guns in that city,
17 and may best be understood in terms of a time line of significant developments:

18 In 1923 the California Legislature was considering a massive collection of gun control laws.
19 This included a prohibition against anyone buying a handgun without a permit. That provision was
20 ultimately not enacted. But the Legislature went even further, taking affirmative action. It enacted
21 into law what is now Penal Code § 12026, declaring that law abiding, responsible adults would *never*
22 be subject to a permit law, i.e., a law that bans handgun possession unless you have a permit.

23 In 1969 San Francisco enacted a handgun registration ordinance, which was then challenged in
24 the state Supreme Court on the ground that it constituted a law requiring a permit to own handguns in
25 violation of § 12026. The Supreme Court rejected that challenge, saying that a registration law only
26 requires that handguns be “registered” but does not require the owner to have a “permit” or license.
27 *Galvan v. Superior Court* (1969) 70 Cal. 2d 51. The *Galvan* court went to great length to define and
28 distinguish between the concepts of “license” and “registration.” Significantly, the Court in *Galvan*

1 referred to the “no license or permit shall be required” language of § 12026 as conferring a *right* upon
2 California’s residents to possess a handgun in the privacy of their own homes and businesses, stating:

3 In 1923, the provision prohibiting carrying concealed firearms without a license was
4 changed to concealable weapons (Stats. 1923, ch. 339, § 2, at p. 696), and a paragraph
5 added-substantially, Penal Code section 12026, that “no permit or license” could be
6 required to possess a firearm at one’s residence or place of business . . .

7
8 The Legislature intended that *the right to possess a weapon at certain places could not*
9 *be circumscribed* by imposing any requirements . . . (*Id.* at 858.)

10 In 1970, displeased with the *Galvan* result regarding registration, the Legislature enacted a new
11 statute to supercede it. Authored by *amicus* herein Senator H. L. Richardson, that new statute
12 (originally Gov. Code § 9619) became § 53071. Section 53071 was intended to ban any local law that
13 required either “registration” or “licensing,” as *Galvan* had broadly defined those terms, with respect to
14 the purchase or possession of any kind of firearm.

15 In 1971 the Court of Appeals (First District) in *Olsen v. McGillicuddy*, (1971) 15 Cal.App.3d
16 897 [93 Cal.Rptr. 530], declined to find preemption under § 53071 of “the subject of the regulation of
17 the use of BB guns by minors. . .” The ordinance in question was a *possession and use regulation* of
18 BB guns. (Section 53071 was never intended to preclude localities from regulating the *use* of firearms
19 or BB guns (which are not “firearms”) – hence the plethora of local firearm discharge ordinances.)

20 Again displeased, in response to the *Olsen* decision the Legislature passed § 53071.5,
21 preempting the field of BB gun regulation, including manufacturer, sale, and possession. In drafting
22 § 53071.5 differently from the language it had used in § 53071, the Legislature was tailoring the
23 language of the new statute to respond to the language and terms used in the *Olsen* decision, just as it
24 did in drafting § 53071 in response to the terms used in *Galvan*.

25 In 1972 San Francisco tried again, enacting an ordinance which purported to require a permit to
26 *buy* a handgun. This was quickly stricken down as contrary to both §§ 12026 and 53071. (*Sippel v.*
27 *Nelder* (1972) 24 Cal.App.3d 173 [101 Cal.Rptr 89].) Similar to the Court in *Galvan*, the court in
28 *Sippel* found that under § 12026 Californians were “entitled” to purchase [and possess] a handgun,
even without resorting to § 53071’s express preemption language:

The plaintiff in the instant case did not fall within the excepted classes prescribed by
Penal Code, section 12021, and *he was therefore entitled, under Penal Code section*
12026, to possess a concealed firearm at his residence without obtaining a license or

1 *permit of any kind*. Under the reasoning of the *Galvan* case, municipal regulations such
2 as the San Francisco ordinances would clearly have been invalid even prior to the
3 enactment of Government Code, section 9619 [now, section 53071], since they are in
4 direct conflict with Penal Code, section 12026.

5 (*Id.* at 177 (emphasis added).)

6 On June 28, 1982, San Francisco tried once again, enacting an ordinance which purported to
7 ban the *possession* of all handguns, but did not seek to abolish *all* exceptions, e.g., the power the state
8 grants to local police chiefs and sheriffs to issue concealed carry licenses under to Penal Code § 12050.

9 On August 3, 1982 the California Attorney General issued an opinion at the request of *amicus*
10 herein Senator H. L. Richardson addressing the issue of whether a city could enact legislation of the
11 type being contemplated by San Francisco, and finding such a regulation would be preempted. (65
12 Ops. Cal. Atty. Gen. 457 (1982); 1982 WL 155982 (Cal. A.G.))

13 Then, in *Doe v. City & County of San Francisco* (1982) 136 Cal.App.3d 509 [186 Cal.Rptr.
14 380], the Court of Appeal struck down the San Francisco ordinance on three grounds: (a) it created
15 licensing scheme in violation of § 53071; (b) it violated § 12026's prohibition on local permit
16 requirements to keep a handgun in the home because it left the police chief free to issue concealed
17 carry licenses that allowed the holder to have a handgun in the city; and (c) the existence of § 12026
18 impliedly deprives cities of the power to ban handguns (whether with or without a permit
19 requirement). *Doe* rejected the claim that § 12026 precludes only a license-issuance scheme but
20 allows a total ban, stating: "It strains reason to suggest that the state Legislature would prohibit
21 licenses and permits but allow a ban on possession."

22 Because *Doe* is still good law it flatly invalidates the Ordinance. In addition to the Ordinance
23 being in conflict with § 53071, § 12026 has an *identically phrased* preclusion of any local ban of
24 handgun *purchasing*. It equally "strains reason" to suggest that § 12026 (b)'s prohibition of local
25 licensing of handgun sales allows a flat ban on such sales. You cannot have a purchase without a sale.

26 In 1998, an appeals court upheld a local ban on the *sale* of certain specific handguns that the
27 ordinance misidentified as "Saturday Night Specials." (*California Rifle & Pistol Assn. v. City of West*
28 *Hollywood* (1998) 66 Cal.App.4th 1302 [78 Cal.Rptr.2d 591] (*CRPA*)). Unfortunately, *CRPA*
misinterpreted § 53071 to not apply to local *sales* bans if the ordinance banned only the *sale* of *certain*

1 kinds of guns, but not others. (*Id.* at 1321-1322.) Even under *CRPA*'s view of § 53071, however, §
2 53071 still invalidates the Ordinance, which bans the sale of *all* guns, and *possession* of handguns
3 unless licensed (*i.e.*, non-residents, police, etc.). Notably, *CRPA* in no way, either expressly or
4 implicitly, purported to overrule the 1982 *Doe* case. Rather, it acknowledged *Doe*, but distinguished
5 that case, and §§ 12026 and 53071, on the ground that they dealt with bans on the *purchase and*
6 *possession* of all handguns, not with bans on the *sale* of only specific types of handguns.²

7 In 2002, the California Supreme Court took up firearm preemption issues in a pair of cases
8 certified to that Court by the Ninth Circuit Court of Appeals. *See, Nordyke v. King* (2002) 27 Cal.4th
9 875; *Great Western v. Los Angeles* (2002) 27 Cal.4th 853. The cases involved the attempt by Alameda
10 and Los Angeles Counties to ban gun shows from county fairgrounds by prohibiting either the
11 possession, or the sale, of firearms on *county-owned* property. Although the California Supreme Court
12 ultimately found that the local ordinances were not preempted, the holdings are limited to the facts of
13 those cases and the questions certified, as described more fully in Part V, below, and do not bear
14 directly on the validity of the Ordinance in this case. In fact, the Court in *Great Western* cited *Doe*
15 approvingly, as an example of a case wherein an ordinance was properly preempted, *i.e.*, it affirmed
16 rather than limited the holding in *Doe*. (*Id.* at 863-64.).

17 Despite the repeated decisions rejecting San Francisco's attempts to ban firearms, some recent
18 decisions (or politics) have apparently emboldened San Francisco to try again. This time San
19 Francisco apparently hopes to distinguish its attempt by limiting part of the ordinance's application to
20 City residents to try to transform the gun ban into purely a municipal affair.

21 ///

22 ///

23
24 ² For example, in listing discrete areas of regulation fully preempted by the State law, the
25 *CRPA* court stated: "In summary, the Legislature has expressly declared that the City may
26 not require the licensing or registration of firearms. (Gov. Code § 53071.) The Legislature
27 has also declared that the City may not require permits or licenses to purchase, own, possess,
28 keep, or carry a pistol, revolver, or other firearm capable of being concealed within a place
of residence, place of business, or on private property owned or lawfully possessed. (Pen.
Code § 12026.)" (*Id.* at 1313.) Note also, that the Legislature has since passed the Unsafe
Handgun Act, Penal Code sections 12125-12233, designating which handguns may be sold
in the State, thus precluding further such ordinances – and most cities voluntarily dropped
such laws – including West Hollywood.

1 III. GOVERNMENT CODE § 53071'S EXPRESS PREEMPTION OF LOCAL
2 "LICENSING" OF FIREARMS SHOULD BE READ ACCORDING TO THE BROAD
3 MEANING OF THE LICENSING CONCEPT DESCRIBED IN GALVAN, TO WHICH
4 SECTION 53071 WAS A DIRECT LEGISLATIVE RESPONSE.

5 Section 12026 prohibits local bans on handgun purchase and ownership. Section 53071
6 extends this to all guns by expressly preempting any local "licensing" power. Section 53071, which
7 was written in reaction to the Galvan decision, was also intended to reverse its holding by expressly
8 preempting local registration or licensing of firearms.³ So § 53071's preemption of local "licensing"
9 must be read in light of the broad meaning Galvan gave to the concept of licensing.

10 As Justice Baxter reminds us, it is normally presumed that when legislating on the same subject
11 "the Legislature intended that similar phrases be accorded the same meaning, particularly if the terms
12 have been construed by judicial decision." *People v. Wells*, (1996) 12 Cal.4th 979, 986. Regarding §
13 53071, that presumption is fortified by our knowledge that its author, amici Senator Richardson, and
14 its sponsors were well aware of Galvan and the construction it had given the concept of "licensing" in
15 interpreting Penal Code § 12026, and that they were adopting that construction, i.e. a "license" is
16 defined as "permission or authority to do a particular thing or exercise a particular privilege." Galvan,
17 *supra*, 70 Cal.2d at 856.

18 Further confirmation of § 53071's intent to deprive cities of any power to ban gun sales or
19 possession are documents provided by the Legislative Intent Service. These include a contemporary
20 statement by § 53071's primary author, letters urging its enactment (including one by then
21 Assemblyman Floyd Wakefield), and the Governor's press release upon signing § 53071 into law.⁴
22 These are all consistent in their refutation of the argument that by "licensing" § 53071 only precludes
23 ordinances that involve the issuance of a physical license while allowing cities to ban guns altogether.
24 The governor's press release epitomizes all the documents. He described what he was signing as:

25 legislation which will insure uniform regulations on their [firearms'] use throughout the
26 state . . . in much the same way as the state establishes uniform regulations governing
such things as traffic safety on highways throughout California.

27 ³ *Suter v. Lafayette* (1997) 57 Cal.App.4th 1109, 1111, n.2 [67 Cal.Rptr. 420].

28 ⁴ See Request for Judicial Notice which will be filed forthwith.

1 Gov. Reagan said, “Without this legislation, sportsmen might well be confronted in the future
2 by a chaotic maze of differing local firearm licensing regulations each time they entered
3 another local jurisdiction to go hunting.

4 “Imagine driving along a freeway from one county to another, not knowing from one mile to
5 the next if traffic regulations had changed and, if so, in what way,” he said. He noted that
6 California now has a comprehensive Deadly Weapons Control Act which provides for
7 statewide regulation of firearms. [Emphasis added.]

8 These documents are irreconcilable with the Ordinance. Allowing cities to enact a chaotic
9 maze of total gun bans without recognizing the exceptions built into carefully-crafted state laws
10 perpetuates the very problem § 53071 was intended to eliminate. Its intent can only be fulfilled by
11 understanding that § 53071 preempts all local power to ban guns, regardless of what form the ban
12 takes. The intent was to “insure uniform regulations” on the *purchase and possession* of firearms, by
13 placing those subjects exclusively in the power of the State to establish.

14 Although the Legislature could have worded § 53071 differently to make it clearer that § 53071
15 prohibits local bans of gun sales or possession, in light of precipitating § 53071 (and *Olsen* later
16 separately precipitating 53071.5) the language of § 53071 is completely understandable. When
17 enacting § 53071.5, the legislature simply did not simultaneously go back and amend § 53071. This is
18 typical in Sacramento. At the time § 53071.5 was passed, the state of law as affirmed in *Doe* had
19 already been interpreted as supporting the position that *amici* are urging here, therefore there was no
20 need to amend § 53071.

21 Moreover, the Legislature had no reason to rewrite §§ 12026 or 53071. The legislators have
22 been authoritatively and repeatedly advised that the wording of the §§ 12026 and 53071 *do* preclude
23 flat local bans of either firearm sale or possession, so there was no need to change it. Those words
24 were interpreted to mean just that in *Galvan*, *Doe*, and three opinions by the Attorney General and
25 Legislative Counsel,⁵ respectively, finding that localities are precluded from banning the acquisition

26 ⁵ Legislative Counsel opinions are entitled to as much weight as Attorney General Opinions,
27 or even more. The Legislative Counsel is, after all, the Legislature's own lawyer. “It must
28 be presumed that [such opinions] have come to the attention of the Legislature, and if [they]
were contrary to the legislative intent that some corrective measure would have been
adopted.” (*California Ass'n. of Psychology Providers v. Rank* (1990) 51 Cal. 3d 1, 21 [270
Cal.Rptr. 796] (referring to Attorney General opinions, but applying the same point to the
Legislative Counsel in the next paragraph).)

1 and possession (by persons qualified under state law) of handguns permitted by state law.⁶

2 The only reason for the Legislature to rewrite these laws would be if it disagreed with those
3 opinions. Far from disagreeing, the Legislature ratified the opinions by reenacting § 12026 repeatedly
4 over the years without relevant change.⁷

5 At least eight bills to allow cities to ban gun or handgun acquisition and possession have been
6 introduced -- but rejected -- over the past thirteen years.⁸ Ordinarily the non-enactment of legislation
7 has little import. But here there is a pattern of repeated attempts to change the law, all being
8 repeatedly rejected. These repeated attempts show the Legislature's knowledge that localities have no
9 such power under current law. (*People v. Romero* (1996) 13 Cal.4th 497, 520 [53 Cal.Rptr. 789].)
10 The fact of their non-enactment confirms the Legislature's intent that localities should not have such
11 power. As summarized in the hearing memorandum on Assembly Bill 634:

12 The Legislature, in enacting pre-emption statutes, has expressed its intent for the need
13 for uniform statewide standards relating to . . . firearms, [a subject] already involving
14 extensive and comprehensive regulation by the state[. Here] . . . the need for existing
15 statewide standards and the uniformity it provides could not be more necessary.
16 Conversely, permitting any widespread additional local restrictions [regarding] . . .
17 firearms could not possibly add anything other than general confusion to the regulatory
18 scheme.⁹

16 **IV. THE ORDINANCE CONFLICTS WITH, DUPLICATES, AND FRUSTRATES**
17 **MULTIPLE STATE LICENSING SCHEMES**

18 The general approach taken by the state regulatory scheme is to identify a problem area,
19

20 ⁶ "Cities may not enact an ordinance to prohibit sale or possession of handguns." March 2,
21 1982 Legislative Counsel Opinion (emphasis added) (see request for Judicial Notice filed
22 herewith); 65 Ops. Cal. Att. Gen. 457 (1982) ("A California city does not have the
23 legislative authority to prohibit the possession of operative handguns within the city even if
24 law enforcement officers are precluded from the prohibition"); 77 Ops. Cal. Atty. Gen. 147
(1994) (state law occupies the field as to the sale of any kind of firearm or ammunition).

24 ⁷ Acts of 1995, Ch. 322, § 1; Acts of 1989, Ch. 958, § 1; Acts of 1988, Ch. 577, § 2. The
one noteworthy change is that § 12026 is now subdivided.

25 ⁸ Assem. Bill No. 136 (1997-98 Reg. Sess.); Assem. Bill No. 247 (1997-98 Reg. Sess.); Sen.
26 Bill No. 644 (1997-98 Reg. Sess.); Assem. Bill No. 634 (1995-96 Reg. Sess.); Assem Bill
27 No. 2706 (1993-94 Reg. Sess.) Sen. Bill No. 1293 (1993-94 Reg. Sess.); Assem. Bill 2865
(1993-94 Reg. Sess.); Assem. Bill 137 (1993-94 Reg. Sess.).

28 ⁹ See Jan. 23, 1996 Assembly Committee on Public Safety Hearing Memo on
AB 634, p. 2 (emphasis added).

1 regulate it, and then to create myriad exceptions to the regulations for situations or persons that are not
2 part of the problem. In essence, this approach creates a comprehensive licensing scheme throughout
3 the dangerous weapons control statutes contained in Penal Code §§ 12000 through 12809. It was this
4 scheme that §53071 was enacted to protect.

5 **A. Statutes Regulating Firearms**

6 There is no other piece of personal property so highly regulated in California as firearms.
7 There are state laws concerning manufacture, distribution and sale, acquisition, transfer, use, where
8 possessed, by whom possessed, in what manner possessed, storage, ownership, transportation,
9 forfeiture, sale, receipt, inheritance, composition, design, size, safety features, accessories, age and
10 function.¹⁰

11 As noted above, § 53071 indicates an express intent by the legislature to occupy the whole field
12 of the regulation of firearms licensing and registration. That code section was interpreted in *Doe* when
13 the Appellate Court questioned “whether the San Francisco Handgun Ordinance merely regulates
14 possession or instead constitutes a licensing ordinance in violation of the express preemption of
15 § 53071.” (*Doe*, 136 Cal.App.3d at 516.)

16 Later, in the *CRPA* case, the court found no preemption of local ordinances with respect to the
17 *sale* of a certain classes of allegedly dangerous firearms designated as “Saturday Night Specials.” That
18 court found that firearm *sales* are regulated by only a relatively few sections of California Penal Code:
19 §§ 12070, 12071, 12071.1, 12071.4, 12072, 12078, 12081, 12082 and 12084.

20 ///

21
22 ¹⁰ For example, in addition to the laws addressing carrying handguns in public, there are
23 laws dealing with gun design. [See the various law regulating semi-automatic and full
24 automatic weapons, at both the State and Federal level.] There are laws regulating size and
25 function. [See Penal Code section 12125-12133 (which is the State counterpart to now
26 preempted local ordinances regulating “Saturday Night Specials”).] There are laws
27 classifying guns by age. [See California Penal Code § 12001 and 18 USC 921(a)(16).] There
28 are laws proscribing who may have a gun. [See Penal Code § 12021 and Welfare &
Institution Code §§ 8100 et seq.] There are laws regulating the transportation of firearms.
[See e.g. Penal Code § 12026.2] There are schemes for licensing and registration of
handguns. [Penal Code §§ 12070 and 12021] There are laws for the concealed carry of
handguns. [See Penal Code § 12050]. There are laws regulating the transfer of firearms.
[Penal Code § 12072] There are laws requiring training before purchase of a firearm. [Penal
Code § 12081]. This list is not nearly exhaustive and does not address federal law.

1 **B. Statutes Licensing Handgun Possession**

2 In contrast, the state law scheme with respect to *possession* of firearms is much more
3 comprehensive, and the express statutory permissions to possess handguns that are created by statutory
4 exemptions to the general prohibitions are much more comprehensive. All of those statutory
5 privileges are invalidated by the Ordinance, in direct conflict with Government Code § 53071.

6 **1. Carrying Concealed or Loaded Handguns in Public**

7 Perhaps the best place to start to understand the state’s approach to handgun possession is with
8 the laws that regulate and license the carrying of concealed or loaded handguns in public. The
9 Ordinance contains no exception to its general ban on handgun possession for persons with a valid
10 CCW license under Penal Code § 12050. Nor does it respect the statutory licenses to carry a concealed
11 handgun *without* a CCW found in §§ 12025.5, 12026, 12026.1, 12026.2, 12027, or 12027.1.

12 Regarding loaded firearms, § 12031 generally prohibits carrying a loaded firearm in public, but
13 §§ 12031(b), 12031(j), 12031(k), and 12031(l) create situations where a loaded handgun can be
14 possessed, all of which are also prohibited by the ordinance.

15 It is thus possible for a person found in possession of a handgun in San Francisco, to be
16 adjudged not guilty of violating §§ 12025 or 12031, yet still be found guilty of violating the Ordinance.

17 **2. Other Firearm Possession Restrictions and Allowances/Licenses**

18 In addition to dealing with the carrying of concealed or loaded handguns in public, California
19 state law also regulates firearm possession under approximately *fifty* statutes.¹¹ Many of these statutes

21 ¹¹ See, e.g., Business and Professions Code § 7596.3, *et seq.*, for issuance of firearms to
22 employees of a security and alarm company. Civil Code § 1714.3 imposing civil liability for
23 negligent possession and storage of a firearm. Civil Code § 3482.1 regulating shooting
24 ranges and activities thereon. Education Code § 48900, which provides for the expulsion of
25 a student for unlawful possession of a firearm. Family Code § 6389 prohibits persons
26 subject to domestic violence restraining orders from possessing firearms while the order is in
27 effect. There are several Fish and Game Code sections regulating possession of firearms
28 while engaged in certain activities and in certain areas: §§ 2005, 6854, 10651, 10662, 10663
and 10665. Sections of the Health and Safety Code prohibit possession of a firearm by any
person in possession of a controlled substance. Penal Code § 171d prohibits possession of a
firearm by unauthorized persons in the Governor’s, or any other constitutional officer’s
residence. Penal Code § 186.22, *et seq.*, regulates possession of firearms by persons found to
be members of street gangs. Penal Code § 417, *et seq.*, criminalizes the irresponsible display
– brandishing – of a firearm. All of the sections of Penal Code § 830, *et seq.*, not mentioned
previously, pertain to the possession of firearms by persons designated a peace officers.
Penal Code § 1203 governs possession of firearms by persons on probation. Penal Code §

1 are broad in their reach, quite long in their text, quite complex in their application, and most
2 importantly for § 53071 analysis, quite thorough in their exceptions. Clearly, the subject matter of
3 *possession* of firearms in general and handguns in particular has been so fully covered by general law,
4 and by the scheme of express and *de facto* licenses created through statutory exceptions so extensive,
5 as to be covered by the express preemption provisions of Government Code § 53071.

6
7 **V. THE SUPREME COURT'S RULINGS IN *GREAT WESTERN* AND *NORDYKE***
8 **CONCERN THE NARROW ISSUE OF REGULATING GUN SHOWS ON PUBLICLY-**
9 **OWNED PROPERTY; TO THE EXTENT THEY ADDRESS *DOE*, THEY REAFFIRM**
10 **RATHER THAN REPUDIATE ITS HOLDINGS**

11 The anti-gun lobby has consistently exaggerated the impact of the narrow holdings in both
12 *Great Western Shows, Inc. v. Los Angeles County* (2002) 27 Cal.4th 853, and *Nordyke v. King* (2002)
13 27 Cal.4th 875. The City will no doubt follow suit. But these companion cases were certified for
14 Supreme Court review to resolve specific legal issues regarding possible conflicts with the State's new
15 gun show laws on gun shows held on county-owned property, an issue of first impression. (See, *Great*
16 *Western Shows, Inc. v. Los Angeles County* (9th Cir. 2000) 229 F.3d 1258, 1263). Both the issues

17 12020.5 criminalizes the unlawful advertising of, among other things, certain kinds of
18 firearms. Penal Code § 12021 penalizes possession of a firearm by a convicted felon or any
19 person found guilty of a set of enumerated misdemeanors. Penal Code § 12026.1 outlines
20 the regulations for transporting a firearm in a motor vehicle. Penal Code §§ 12028, 12028.5
21 & 12090 each provide for the disposition of firearms after a trial, firearms temporarily taken
22 during a domestic dispute, and firearms declared to be a nuisance. Penal Code § 12032,
23 outlines the procedures for disposition of surplus firearms in the possession of an official of
24 a state or local agency. Penal Code § 12034 makes the owner of a vehicle responsible for
25 the safe and lawful transportation of firearms in his/her vehicle. Penal Code § 12035
26 addresses the issue of criminally negligent storage of a firearm. Penal Code § 12040 makes
27 it a crime for a person to be in possession of a firearm while wearing a mask. Penal Code §
28 12095, *et seq.*, outlines the state permit process for possession of a short barreled rifle and/or
short barreled shotgun. Penal Code § 12101 places tight restrictions on possession of a
firearm by a minor. Penal Code § 12200, *et seq.*, regulates possession of machine guns in
California. Penal Code § 12275, *et seq.* [also known as the Roberti-Roos Assault Weapons
Act], regulates the sale and possession of certain specified rifles, shotguns and pistols. Penal
Code § 12590 prohibits possession of a firearm while engaged in a labor dispute and
picketing in a public place. Welfare and Institutions Code § 8100, *et seq.*, prohibits the
possession of firearms by mental patients and sets forth due process requirements for firearm
forfeiture. For polling places in the county, the Ordinance duplicates Election Code §18544.
The Ordinance duplicates (and conflicts) with Penal Code §171b for firearms brought into
state and public buildings in the county. For any place within the county where a committee
of the California Assembly or Senate might hold hearings, the Ordinance duplicates Penal
Code §171c. For any school located in the county, the ordinance is redundant with respect
to Penal Code §§ 626.9 and 626.95.

1 presented and the holdings in these cases were narrowly tailored, and are easily distinguished from the
2 facts and issues in *Doe*. To the extent *Great Western* and *Nordyke* addressed *Doe*, they did so
3 approvingly. (*Great Western, supra*, at 864-64 (*Nordyke* neither criticized nor mentioned *Doe*.)

4 Briefly, both *Great Western* and *Nordyke* arose out of disputes between local governing bodies
5 and operators of local gun shows that traditionally had been held on county fairgrounds. In each case,
6 the challenged ordinance was designed to stop the gun shows. In *Great Western* the county sought to
7 halt the gun shows by banning the sale of guns and ammunition at the Los Angeles County
8 Fairgrounds; in *Nordyke*, the county sought to ban possession of firearms at its fairgrounds. (See
9 *Great Western, supra*, at 859; *Nordyke, supra*, at 880-81.)

10 **A. *Great Western* Upheld an Ordinance Banning Sales of Guns and Ammunition at**
11 **Gun Shows on County Property, Only – It Failed Even to Address Whether a**
Countywide Ban on Gun Show Sales Would Survive a Preemption Challenge

12 The specific and narrow issues certified to the Court in *Great Western* were stated –
13 unambiguously – at the outset of the Supreme Court opinion:

- 14 1. Does state law regulating the sale of firearms and gun shows preempt a county
15 ordinance prohibiting gun and ammunition sales **on county property**?
16 2. May a county, consistent with article XI, section 7 of the California Constitution,
17 regulate the sale of firearms **on its property** located in an incorporated city within the
18 borders of the county?" (*Great Western, supra*, 27 Cal.4th at 858 (emphasis added).)

19 The holding in *Great Western* was equally narrow, and based on the county's ability to control
20 activities **on its own property**:

21 Thus, a county has broad latitude under Government Code section 23004, subdivision
22 (d), to use its property, consistent with its contractual obligations, "as the interests of its
23 inhabitants require." . . . the County is not compelled to grant access to its property to
24 all comers. Nor do the gun show statutes mandate that counties use their property for
25 such shows. If the County does allow such shows, it may impose more stringent
26 restrictions on the sale of firearms than state law prescribes. For all the above reasons,
27 we conclude that the Ordinance is not preempted by the sale of firearms and/or
28 ammunition **on County property**. *We do not decide whether a broader countywide*
ban of gun shows would be preempted. (*Id.* at 870 (emphasis added).)

29 Thus, the Court in *Great Western* based its decision on the County's discretion to use its own
30 property to suit its needs, as manifest by the Court declining to extend its holding beyond County-
31 owned property, specifically stating that it was not deciding whether a countywide ban on gun show
32 sales would conflict with State law or survive a preemption challenge. (*Id.*) In short, in terms of the
33 issue presented and the case holding, *Great Western* has absolutely *nothing* to do with handgun

1 possession in the privacy of one's own home or business. Moreover, in terms of the preemption
2 analysis in *Great Western*, the Court cited *Doe* as an example of a case wherein an ordinance was
3 properly preempted, i.e., it affirmed rather than limited the holding in *Doe*. (*Id.* at 863-64.)

4 **B. *Great Western* Cited *Doe* Approvingly, Noting the Hand Gun Ban Ordinance In**
5 ***Doe* Impermissibly Conflicted with Both Government Code § 57031 and Penal**
6 **Code § 12026**

7 Before the Court in *Great Western* turned to the specific issue at hand, i.e., whether the Los
8 Angeles ordinance banning sales of ammunition and firearms at gun shows on County-owned property
9 conflicted with the State's gun show laws, it first examined the spectrum of firearms preemption cases.
10 After discussing certain cases where ordinances were found valid, the Court turned to *Doe* as an
11 example of a case where an ordinance *did* conflict with State laws. Further, in its discussion of *Doe*,
12 the Court referenced both statutes that the appellate court relied upon in finding that San Francisco's
13 ordinance banning hand gun possession conflicted with and was preempted by State laws. That is, it
14 recognized and approved *Doe's* alternate holdings based on § 57031 and § 12026 – and without a
15 single word of criticism nor any attempt to limit the holding in *Doe*. The Court did *not* treat *Doe's*
16 alternate holdings (based on § 12026) as dictum, something anti-gun groups are wont to do.

17 The California Supreme Court's respect for *Doe*, using it as an example of a case where
18 preemption was appropriate, comports with the analysis above regarding the reaction of the Legislature
19 to *Doe*. Thus, both the Legislature and the Supreme Court have examined and approved *Doe*,
20 implicitly in the case of the Legislature and explicitly in the case of the Court, without limitation. It is
21 the law. And any ordinance that would prohibit law abiding citizens from keeping hand guns within
22 the sanctity of their own homes or businesses must be examined based on that law.

23 **C. *Nordyke*, the Companion Case to *Great Western*, Addressed and Resolved a**
24 **Similarly Narrow Issue Regarding Gun Shows on County-owned Property**

25 As in *Great Western*, the Court in *Nordyke* was faced with a narrow issue of first impression
26 and, as in *Great Western*, the question certified for review by the Court was stated unambiguously at
27 the outset of that opinion, as follows:

28 We granted the request of the United States Court of Appeals for the Ninth Circuit, for
certification pursuant to California Rules of Court, rule 29.5 to address the following question:
Does state law regulating the possession of firearms and gun shows preempt a municipal

1 ordinance prohibiting **gun possession on county property?**"

2 (*Nordyke, supra*, 27 Cal.4th at 880 (emphasis added).)

3
4 As it did in *Great Western*, the Court in *Nordyke* (1) relied heavily upon the county's statutory
5 right to regulate activities on its own property, and (2) answered the narrow issue presented with an
6 equally narrow holding:

7 We further conclude that under Government Code section 23004, subdivision (d), a
8 county is given substantial authority to manage its property, including the most
9 fundamental decision as to how the property will be used, and that nothing in the gun
10 show statutes evince an intent to override that authority. The gun show statutes do not
11 mandate that counties use their property for such shows." (*Id.* at 882.)

12 In sum, whether or not the Ordinance is partially preempted, Alameda County has the
13 authority to prohibit the operation of gun shows held on its property, and, at least to that
14 extent, may ban possession of guns on its property. (*Id.* at 885.)

15 Thus, both *Great Western* and *Nordyke* stand for the narrow proposition that State gun show
16 regulations do not preclude local governments from banning the sale or possession of firearms and
17 ammunition at gun shows on county-owned property. Neither case addressed the validity of such laws
18 beyond the limited context of the facts presented. Indeed, the Court in both cases went out of its way
19 to disabuse anyone of that notion. (*Great Western, supra*, at 870; *Nordyke, supra*, at 885.)

20 To be sure, both cases provide guidance for courts reviewing preemption challenges to local
21 firearms regulations, finding that a "review of the gun law preemption cases indicates that the
22 Legislature has preempted discrete areas of gun regulation rather than the entire field of gun control."
23 (*Great Western, supra*, at 861.) Clarification on that point arguably was necessary due to the
24 voluminous and ever-increasing State regulation of firearms licensing, registration, use, sales,
25 possession and, specific to those cases, gun shows. But it was not a change in existing law. For
26 example, the court in *Doe* recognized that, notwithstanding comprehensive State regulation of
27 firearms, "the Legislature has not prevented local governmental bodies from regulating all aspects of
28 the possession of firearms." And further: "It is at least arguable that the state Legislature's adoption
of numerous gun regulations has not impliedly preempted *all areas* of gun regulation." (*Doe, supra*,
136 Cal.App.3d at pp. 516, 518 (emphasis in original); see also, *CRPA, supra*, 66 Cal.App.4th at 1316
(quoting *Doe* for the same proposition).) Both *Doe* and *CRPA* predate the Supreme Court's decisions

1 in *Great Western* and *Nordyke*.

2 But to say that “not all areas” of gun regulation are preempted is not to say that none are, nor
3 does it mean that the preemption analysis is any less rigorous regarding local gun regulations than it is
4 regarding other local laws concerning areas heavily regulated by the State. This is manifest in the
5 Court’s use of the *Sherwin-Williams* test when examining the specific gun show ordinances at issue in
6 *Great Western* and *Nordyke*. The Court did not establish a separate preemption test for gun
7 regulations; there is no “preemption-lite” that applies exclusively to local gun regulations. If local
8 regulations conflict with State law or are otherwise preempted under the *Sherwin-Williams* test, either
9 expressly or impliedly, then they are void. As in *Doe*, San Francisco’s (renewed attempt) to ban or
10 confiscate its residents’ handguns conflicts with State law and fails the *Sherwin-Williams* test for
11 multiple reasons, as outlined above.

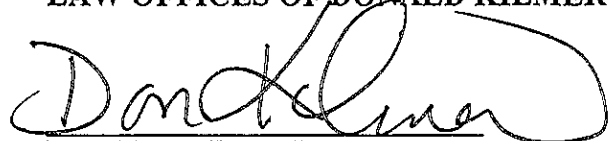
12 **CONCLUSION**

13 Black’s Law Dictionary 5th Edition defines “prohibit” as follows: *To forbid by law; to*
14 *prevent; – not synonymous with “regulate.”* San Francisco is not trying to use Proposition H to
15 regulate public safety with any police powers reserved to it under California constitutional and statutory
16 law. They are trying to prohibit the enjoyment of rights and privileges enjoyed by the rest of
17 Californians who rightly look to Sacramento for statewide gun policy.

18 San Francisco’s attempt to ban handguns must be rejected based on the plain language of the
19 State laws implicated, the legislative history that supports a common sense reading of those laws, and
20 the *Doe* decision, which remains good law and must be followed. Accordingly, Petitioners’ request for
21 relief should be granted.

22 Date: January 31, 2006

LAW OFFICES OF DONALD KILMER

23
24 

25 Donald E. Kilmer, Jr.
26 Attorney for Petitioners
27
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, David Speakman, am employed in the City of San Jose, Santa Clara County, California. I am
5 over the age eighteen (18) years and am not a party to the within action. My business address is 1261
Lincoln Ave., Suite 108, San Jose, California.

6 On February 1, 2006, foregoing document(s) described as

7 **AMICUS BRIEF OF SENATOR H. L. RICHARDSON (RET.), GUN OWNERS OF**
8 **CALIFORNIA, CALIFORNIA RIFLE & PISTOL ASSOCIATION, and THE MADISON**
SOCIETY IN SUPPORT OF PETITIONERS

9 on the interested parties in this action by placing

10 the original

a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

11 C. D. Michel
12 TRUTANICH - MICHEL, LLP
13 180 East Ocean Blvd., Suite 200
14 Long Beach, CA 90802
(Attorney for Petitioners)

Vince Chhabria
OFFICE OF THE CITY ATTORNEY
1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, CA 94102
(Attorney for Respondents)

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18 Executed on February 1, 2006, at San Jose, California.

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to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the
transmission, copies of which is attached to this declaration.

21 — (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the
22 addressee.

23 Executed on February 1, 2006, at San Jose, California.

24 X (STATE) I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

25 — (FEDERAL) I declare that I am employed in the office of the member of the bar of this of this
26 court at whose direction the service was made.

27 
28 DAVID SPEAKMAN

1 Donald Kilmer S.B.N 179986
LAW OFFICES DONALD KILMER
2 1261 Lincoln Ave Ste 111
San Jose, CA 95125-3030
3 Telephone: (408) 998-8489
Facsimile: (408) 998-8487
4

5 Attorneys for Amici
Senator H. L. Richardson
Gun Owners of California
6 California Rifle and Pistol Association
The Madison Society
7

**ENDORSED
FILED**
San Francisco County Superior Court

FEB 03 2006

GORDON PARK-LI, Clerk
BY: MARYANN MORAN
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION

11 PAULA FISCAL et al.,
12
13 Plaintiffs and Petitioners,

14 vs.

15 CITY AND COUNTY OF SAN
16 FRANCISCO et al.,

17 Defendants and Respondents.

) CASE NO. CPF-05-505960
)
) **EX PARTE APPLICATION OF SENATOR**
) **H. L. RICHARDSON (RET.), GUN**
) **OWNERS OF CALIFORNIA,**
) **CALIFORNIA RIFLE & PISTOL**
) **ASSOCIATION, AND THE MADISON**
) **SOCIETY TO FILE AMICUS BRIEF IN**
) **SUPPORT OF PETITIONERS;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT THEREOF;**
) **DECLARATION OF DONALD KILMER**

) Hearing Date: February 15, 2006
) Hearing Judge: Warren
) Time: 9:30 a.m.
) Location: Dept. 301
)
) Date Action Filed: December 29, 2005
) Trial Date: None scheduled

1 Senator H. L. Richardson (Ret.), the Gun Owners of California, California Rifle & Pistol
2 Association, and the Madison Society respectfully move this Court for leave to file the concurrently-
3 submitted brief as *amicus curiae* in support of Plaintiffs and Petitioners.

4 This application is based upon this *Ex Parte* Application, the attached Memorandum of Points
5 and Authorities in support thereof, the attached Declaration of Donald Kilmer, and any oral argument
6 heard by the Court, and the entire record in this action.

7
8 **REASONS FOR FILING**

9 This application should be granted because this Court has already permitted the Legal
10 Community Against Violence to file an overlength *amicus* brief in support of Defendants and
11 Respondents. The accompanying brief primarily addresses the Legislative history and intent of
12 Government Code Section 53071 and the significance of that intent in evaluating the legality of San
13 Francisco's Proposition H. Understanding the intended scope and application of section 53071 is
14 critical to understanding the preemptive effect of that statute on Proposition H. This is a topic about
15 which these particular *amici* can provide valuable information to the court, since *amicus* Senator H. L.
16 Richardson (ret.) was the author of the bill that became section 53071.

17
18 **INTERESTS OF THE AMICI**

19 **SENATOR H. L. RICHARDSON (RETIRED)**

20 Senator H. L. "Bill" Richardson first entered the California Senate in 1966 – the same year
21 Ronald Reagan was elected governor. During the ensuing 22 years, he bypassed three opportunities to
22 go to Congress, instead remaining in the Senate and working in the GOP leadership. Richardson
23 tackled his job with ample energy and good ideas. The result was a record of success, even in the face
24 of opposition. He left the Senate, following his own timetable, in 1988. Today, California continues
25 to feel his influence.

26 **GUN OWNERS OF CALIFORNIA**

27 Gun Owners of America, Inc., and its associated entity, Gun Owners of California, is a
28 California non-profit corporation organized in 1974. It has offices in Sacramento, California and in

1 Falls Church, Virginia, convenient to lobbying the government. Gun Owners of America is a leading
2 voice in the United States supporting the right to self defense and to keep and bear arms guaranteed by
3 the Second Amendment to the Federal Constitution. It monitors government activities at the national,
4 state and local levels that may affect the rights of the American public to chose to own firearms.
5

6 CALIFORNIA RIFLE AND PISTOL ASSOCIATION

7 CALIFORNIA RIFLE AND PISTOL ASSOCIATION, Inc. (hereinafter "CRPA") is a non-
8 profit membership organization with roughly 65,000 members. CRPA is incorporated under the laws
9 of California, with headquarters in Fullerton. Among its other activities, CRPA works to preserve
10 constitutional and statutory rights of gun ownership, including the right to self-defense and the right to
11 choose to keep and bear arms.
12

13 THE MADISON SOCIETY

14 Amicus MADISON SOCIETY is a Nevada non-profit, membership corporation with numerous
15 chapters in California. Its purpose is to preserve and promote the legal and constitutional right to arms
16 of its members and of law abiding, responsible Americans in general. To that end, Amicus
17 MADISON SOCIETY engages in and/or supports litigation in California and nationwide. The
18 Madison Society also engages in political education and advocacy through public meetings,
19 advertising, publishing and distribution of literature, and contact with public officials. Amicus
20 sometimes pursues these activities at trade shows by engaging in the educational display, delivery, or
21 transfers of control over firearms. Trade and gun shows provide a unique opportunity for
22 organizations such as the Madison Society to engage in their protected activities, because they attract
23 not only individuals interested in firearms but a broader cross-section of the population, all of who may
24 be persuaded of amicus's views and may be recruited to advocate its position.

25 ///

26 ///

27 ///

28 ///

1 ARGUMENT

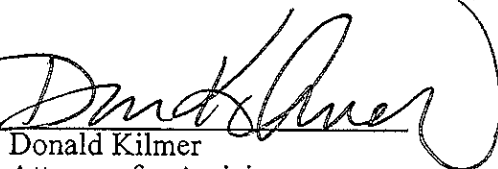
2 "With the permission of the court, an amicus curiae may file briefs setting out his or her views
3 and arguments." 48Cal.Jur.3d Parties §19 (2005) (footnote omitted). The practice of allowing the
4 participation of *amici curiae* is well established in California trial courts. See, e.g., *Marshall v.*
5 *Marshall*, 212 Cal. 736, 738 (1931) (noting that a brief by amici curiae was filed at the trial court's
6 request); *County of Alameda v. Carleson*, 5 Cal. 3d 730, 735 (1971) (noting that the trial court denied
7 motion to intervene but allowed appearance as *amicus curiae*: In re *Veterans' Industries, Inc.*, 8 Cal.
8 App.3d 902, 924-25 (1970) (discussing that an *amicus curiae* lacks standing to appeal a superior court
9 judgment against the *amicus curiae*'s position): *Padres Hacia Una Vida Mejor v. Davis*, 96 Cal.App.
10 4th 1123, 1127-28 (2002) (noting that the superior court granted a request to file *amicus curiae* brief in
11 mandamus action): cf. Cal.R. Ct. 105(b) (providing that in the appellate division of the Superior Court,
12 an *amicus curiae* brief "may be filed on permission first obtained from the presiding judge, subject to
13 conditions he or she may prescribe.")

14 The Richardson *amicus* brief will assist provide this Court with a perspective on the ordinance
15 from those with legislative experience. This perspective has not been directly and fully addressed in
16 either the Petitioners' Writ Motion, nor in the City's Opposition. The Court should therefore grant
17 *Amici's* request for permission to file its brief.

18
19 CONCLUSION

20 Accordingly, the *amici curiae* ask that this Court grant leave to file the *amicus* brief submitted
21 herewith.

22
23 Date: January 31, 2006

LAW OFFICES OF DONALD KILMER

Donald Kilmer
Attorney for Amici

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

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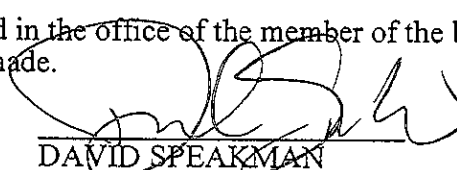
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27 court at whose direction the service was made.

28 
DAVID SPEAKMAN

1 Donald Kilmer S.B.N 179986
LAW OFFICES DONALD KILMER
2 1261 Lincoln Ave Ste 111
San Jose, CA 95125-3030
3 Telephone: (408) 998-8489
Facsimile: (408) 998-8487

4 Attorneys for Amici
5 Senator H. L. Richardson
Gun Owners of California
6 California Rifle and Pistol Association
The Madison Society

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED JURISDICTION

11 PAULA FISCAL et al.,

12 Plaintiffs and Petitioners,

14 vs.

15 CITY AND COUNTY OF SAN
16 FRANCISCO et al.,

17 Defendants and Respondents.

) CASE NO. CPF-05-505960

) **SUPPLEMENTAL DECLARATION OF**
) **DONALD KILMER IN SUPPORT OF**
) **APPLICATION OF SENATOR**
) **RICHARDSON, ET AL., TO FILE AMICUS**
) **BRIEF AND IN SUPPORT OF**
) **APPLICATION OF AMERICAN**
) **ENTERTAINMENT ARMORERS**
) **ASSOCIATION TO FILE AMICUS BRIEF**

) Hearing Date: February 15, 2006
) Hearing Judge: Warren
) Time: 9:30 a.m.
) Location: Dept. 301

) Date Action Filed: December 29, 2005
) Trial Date: None scheduled

COPY

1 I, DONALD KILMER, declare as follows:

2 1. I am an attorney licensed to practice in the State of California. I have first hand knowledge
3 of the matters set forth below; if called as a witness I could and would testify to the same.

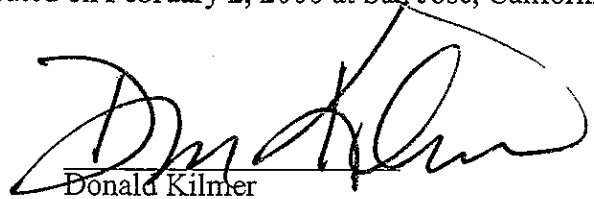
4 2. I am counsel for the Gun Owners of California, Senator Richardson, the California Rifle and
5 Pistol Association, and the Madison Society in the above-captioned matter. I have also agreed to
6 appear specially on behalf of Bruce Colodny, counsel for the American Entertainment Armorers
7 Association, on his application for permission to file an *amicus* brief in this matter.

8 3. My office and Bruce Colodny's office had originally given notice to Petitioners and
9 Respondents that they would seek *ex parte* orders to file *amicus* briefs on behalf of their clients on
10 Wednesday, February 1, 2006 at 11:00 a.m. in Department 301 of the San Francisco Superior Court.

11 4. On the morning of Wednesday, February 1, 2006, David Speakman from my office called
12 Wayne Snodgrass, counsel for Respondents, and told him that I would not be able to appear in court on
13 November 1, 2006, and that I would instead seek an *ex parte* order on behalf of my own clients and
14 specially on behalf of Mr. Colodny's client to file *amicus* briefs on Friday, February 3, 2006 at 8:30
15 a.m. in Department 301 of the San Francisco Superior Court.

16 5. On the morning of Wednesday, February 1, 2006, David Speakman from my office also
17 called C. D. Michel, counsel for Petitioners, and told him that I would not be able to appear in court on
18 February 1, 2006, and that I would instead seek an *ex parte* order on behalf of my own clients and
19 specially on behalf of Mr. Colodny's client to file *amicus* briefs on Friday, February 3, 2006 at 8:30
20 a.m. in Department 301 of the San Francisco Superior Court.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct and that this declaration is executed on February 2, 2006 at San Jose, California.

23
24
25 
Donald Kilmer

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Cally Van Drielen, am employed in the City of San Jose, Santa Clara County, California. I
5 am over the age eighteen (18) years and am not a party to the within action. My business address is
1261 Lincoln Ave., Suite 108, San Jose, California.

6 On February 2, 2006, foregoing document(s) described as

7 SUPPLEMENTAL DECLARATION OF DONALD KILMER IN SUPPORT OF
8 APPLICATION OF SENATOR RICHARDSON, *ET AL.*, TO FILE *AMICUS* BRIEF AND IN
9 SUPPORT OF APPLICATION OF AMERICAN ENTERTAINMENT ARMORERS
ASSOCIATION TO FILE *AMICUS* BRIEF

10 on the interested parties in this action by placing

11 the original
 a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

12 C. D. Michel
13 TRUTANICH - MICHEL, LLP
14 180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
(Attorney for Petitioners)

Vince Chhabria
OFFICE OF THE CITY ATTORNEY
1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, CA 94102
(Attorney for Respondents)

15 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
16 processing correspondence for mailing: Under the practice it would be deposited with the U.S.
17 Postal Service on that same day with postage thereon fully prepaid at San Jose, California, in
18 the ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date is more than one day after date of deposit for
mailing an affidavit.
Executed on February 2, 2006, at San Jose, California.

19 — (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies
20 with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant
21 to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the
transmission, copies of which is attached to this declaration.

22 — (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the
23 addressee.
Executed on February __, 2006, at San Jose, California.

24 X (STATE) I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 — (FEDERAL) I declare that I am employed in the office of the member of the bar of this of this
27 court at whose direction the service was made.

28 
CALLY VAN DRIELEN

1 Donald Kilmer S.B.N 179986
LAW OFFICES DONALD KILMER
2 1261 Lincoln Ave Ste 111
San Jose, CA 95125-3030
3 Telephone: (408) 998-8489
Facsimile: (408) 998-8487
4

5 Attorneys for Amici
Senator H. L. Richardson
Gun Owners of California
6 California Rifle and Pistol Association
The Madison Society
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED JURISDICTION

11 PAULA FISCAL et al.,

12 Plaintiffs and Petitioners,

13 vs.
14

15 CITY AND COUNTY OF SAN
16 FRANCISCO et al.,

17 Defendants and Respondents.
18
19
20

) CASE NO. CPF-05-505960

) **[PROPOSED] ORDER GRANTING**
) **SENATOR H. L. RICHARDSON (RET.),**
) **GUN OWNERS OF CALIFORNIA,**
) **CALIFORNIA RIFLE & PISTOL**
) **ASSOCIATION, AND THE MADISON**
) **SOCIETY PERMISSION TO FILE**
) **AMICUS BRIEF IN SUPPORT OF**
) **PETITIONERS**

) Hearing Date: February 15, 2006
) Hearing Judge: Warren
) Time: 9:30 a.m.
) Location: Dept. 301

) Date Action Filed: December 29, 2005
) Trial Date: None scheduled

1 Having considered the *Ex Parte* Application of the Gun Owners of California, Senator
2 Richardson, the California Rifle and Pistol Association, and the Madison Society,

3 IT IS ORDERED that the Gun Owners of California, Senator Richardson, the California Rifle
4 and Pistol Association, and the Madison Society, are granted permission to file an *amicus* brief in
5 support of Plaintiffs and Petitioners.

6 Date: February ____, 2006

7 The Honorable James Warren
8 Judge of the Superior Court

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, David Speakman, am employed in the City of San Jose, Santa Clara County, California. I am
5 over the age eighteen (18) years and am not a party to the within action. My business address is 1261
Lincoln Ave., Suite 108, San Jose, California.

6 On February 1, 2006, foregoing document(s) described as

7 **[PROPOSED] ORDER GRANTING SENATOR H. L. RICHARDSON (RET.),**
8 **GUN OWNERS OF CALIFORNIA, CALIFORNIA RIFLE & PISTOL ASSOCIATION,**
9 **AND THE MADISON SOCIETY PERMISSION TO FILE**
10 **AMICUS BRIEF IN SUPPORT OF PETITIONERS**

11 on the interested parties in this action by placing

12 the original

13 a true and correct copy

14 thereof enclosed in sealed envelope(s) addressed as follows:

15 C. D. Michel
16 TRUTANICH - MICHEL, LLP
17 180 East Ocean Blvd., Suite 200
18 Long Beach, CA 90802
19 (Attorney for Petitioners)

Vince Chhabria
OFFICE OF THE CITY ATTORNEY
1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, CA 94102
(Attorney for Respondents)

20 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
21 processing correspondence for mailing. Under the practice it would be deposited with the U.S.
22 Postal Service on that same day with postage thereon fully prepaid at San Jose, California, in
23 the ordinary course of business. I am aware that on motion of the party served, service is
24 presumed invalid if postal cancellation date is more than one day after date of deposit for
25 mailing an affidavit.

26 Executed on February 1, 2006, at San Jose, California.

27 — (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies
28 with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant
to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the
transmission, copies of which is attached to this declaration.

— (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the
addressee.

Executed on February 1, 2006, at San Jose, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

— (FEDERAL) I declare that I am employed in the office of the member of the bar of this of this
court at whose direction the service was made.

27 
28 DAVID SPEAKMAN

ENDORSED
FILED
San Francisco County Superior Court

FEB 03 2006

GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

1 Donald Kilmer S.B.N 179986
LAW OFFICES DONALD KILMER
2 1261 Lincoln Ave Ste 111
San Jose, CA 95125-3030
3 Telephone: (408) 998-8489
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4 Attorneys for Amici
5 Senator H. L. Richardson
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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION

11 PAULA FISCAL et al.,

12 Plaintiffs and Petitioners,

14 vs.

15 CITY AND COUNTY OF SAN
16 FRANCISCO et al.,

17 Defendants and Respondents.
18
19
20

) CASE NO. CPF-05-505960

) ~~PROPOSED~~ ORDER GRANTING
) SENATOR H. L. RICHARDSON (RET.),
) GUN OWNERS OF CALIFORNIA,
) CALIFORNIA RIFLE & PISTOL
) ASSOCIATION, AND THE MADISON
) SOCIETY PERMISSION TO FILE
) AMICUS BRIEF IN SUPPORT OF
) PETITIONERS

) Hearing Date: February 15, 2006
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) Location: Dept. 301

) Date Action Filed: December 29, 2005
) Trial Date: None scheduled

1 Having considered the *Ex Parte* Application of the Gun Owners of California, Senator
2 Richardson, the California Rifle and Pistol Association, and the Madison Society,

3 IT IS ORDERED that the Gun Owners of California, Senator Richardson, the California Rifle
4 and Pistol Association, and the Madison Society, are granted permission to file an *amicus* brief in
5 support of Plaintiffs and Petitioners.

6 Date: February 3, 2006

JAMES L. WARREN

The Honorable James Warren
Judge of the Superior Court

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